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**From:**

**Sent:** Mon 4/13/2009 2:44 PM

**To:**

**Cc:**

**Subject:** RE: Period of Limitations and 5 year Carryback Loss

We cannot say whether the taxpayers will receive a refund or what the amount of the refund will be. As we stated in our response, we are only answering the question of whether the period of limitations for the credit or refund is open. For a taxpayer to claim a refund there are a number of requirements that must be met.

A) One of these requirements is the period of limitations, which is the question we addressed in our email to you. As we said, there are two parts to this: limits on whether the claim was filed timely and will even be considered in the first place, and 2) if the claim was filed timely, there may be a limit on the amount of the credit or refund based on when the claim was filed.

B) There are also other requirements that must be met for a taxpayer to receive a credit or refund. The claim must be calculated correctly and follow the other requirements of the law. And importantly, there must actually be an overpayment in order for a taxpayer to receive a credit or refund. Whether there is an overpayment depends on the amount of tax assessed and the payments that have been made in the tax year under consideration.

The questions you ask below appear to fall into the areas in paragraph that we named "B" for ease of discussion. Some of the questions you ask are beyond the scope of the statute of limitations issue, while others are dependent upon the facts of the case. As the questions are beyond the scope of the statute of limitations issue, we would not be in a position to address those questions even if we knew all the facts. However, there is no reason to believe the amount of any overpayment would equal the amount of the NOL carryback. Remember, the NOL carried back will reduce the taxable income, which in turn reduces the amount of tax due. If the NOL reduces the taxable income to zero, then any payments made in excess of that amount should constitute an overpayment. What section 6511(d)(2)(A) does is allow a credit or refund of an overpayment that results from the carryback of an NOL, assuming the conditions of (d)(2)(A) are satisfied.